

In Sabourin, the board expressly considered each of the five requisite criteria set forth in the statute, and the Court therefore concluded that the bylaws were not at issue, but only the wisdom of the board's decision. Sabourin, 146 Vt. at 420. By contrast, in the present case, the DRB only made two factual findings, both of which pertain only to the first of the five variance criteria: that the parcel of land owned by the applicants had a unique shape that limits any proposed addition and that there are wet lands restricting the development to the rear. The DRB did not address whether the existing residential use being made of the property was a reasonable use (' 8.4.4(b)), nor did it address whether an addition could be built onto the side and back of the house that would constitute a lesser deviation from the Zoning Regulations. ' 8.4.4(e).

Due to the very limited factual findings and entirely conclusory recitations of the variance criteria in the DRB decision, the Court cannot here determine whether or not the DRB actually considered all five of the variance criteria; that is, whether it acted within the ambit of its variance authority. In the present case, the Town claims that the DRB exceeded its authority and misconstrued the law by applying the wrong variance standard in the decision on appeal, or, rather, by failing to apply some of the five criteria for a variance. The Town therefore has standing to bring this appeal, as its claim is that the DRB misconstrued the Zoning Regulations. Accordingly, based on the foregoing, Appellee-Applicants' Motion to Dismiss for Lack of Standing is DENIED.

In addition, the Town seeks clarification of the August 26, 2003 Entry Order as to whether the appeal involves the interpretation of Criterion 2 or Criterion 3 of the variance criteria. The Town's Statement of Questions raises the issue of whether the property is already being put to a reasonable use, which is the second, not the third, of the five variance criteria. We agree that the August 2003 Entry Order contains a clerical error. The second sentence of the August 2003 Entry Order is corrected to read as follows (corrections in **bold type**):

The Town has standing to address the interpretation of **criterion 2 (' 8.4.4(b))** of the variance criteria; that is, in that sense the Town's zoning ordinance is at issue.

See V.R.C.P. 60(a) (clerical mistakes may be corrected by the court at any time of its own initiative or on the motion of any party).

The remaining hearing on the merits of the variance application is scheduled for 9 a.m. on November 6, 2003 at the Costello Courthouse, 32 Cherry Street, Burlington. Please advise the Court on or before October 17, 2003 whether that hearing will be needed or whether the parties will submit the remaining issues on agreed facts, and whether the parties request a telephone conference in advance of the hearing.

Done at Barre, Vermont, this 7th day of October, 2003.

Merideth Wright
Environmental Judge

Footnotes

